

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 45 OF 2002

Pratap Dina Naik,  
presently undergoing sentence  
at Central Jail, Aguada,  
Bardez - Goa.

... Appellant.

versus

State

... Respondent.

Mr. S. G. Dessai, Senior Advocate with Mr. Arun Bras De  
Sa, Advocate for the Appellant.

Mr. S. N. Sardessai, Public Prosecutor for the State/  
Respondent.

CORAM: A. M. KHANWILKAR &  
P. V. HARDAS, JJ.

DATED: 11TH NOVEMBER, 2003.

**ORAL JUDGMENT** (PER P. V. HARDAS, J.)

The Appellant by this Appeal challenges his conviction for an offence punishable under Section 302 of the Indian Penal Code and sentence of imprisonment for life and fine of Rs.2000/-, with a default stipulation to suffer Rigorous imprisonment for 3 months in the event of non payment of fine, passed by the learned Sessions Judge, North Goa, Panaji, by

Judgment dated 6th September, 2002, in Sessions Case No.35 of 2001.

2. The facts as are necessary for the decision of this Appeal are stated hereunder:-

P.W.17, Edwin Colaco, was attached to the Ponda Police Station as Police Sub Inspector. On the basis of the complaint of P.W.8, Pravin Naik, at Exh.19, an offence against the Appellant/Accused came to be registered under Section 307 of the Indian Penal Code. Prior to the lodging of the complaint, a wireless message had been received informing the Police that one lady named Prashanti was admitted in Ward 109. On receipt of the said message, P.W.17, Edwin Colaco, had gone to the Goa Medical College for recording the statement of the victim. The doctor on duty, however, certified that the injured Prashanti was not in a fit condition to give her statement. On the same day, in the presence of the panch witnesses namely P.W.1, Prakash Naik and one Erasmo Aguiar, scene of the Offence Panchanama at Exh.8 was drawn. The Accused was apprehended and Arrest Panchanama in the presence of P.W.4, Daniel Fernandes, at Exh. 13 was drawn. Since, the injured Prashanti succumbed to her injuries, the offence which was registered under Section 307 of the Indian Penal Code was converted into Section 302 of the

Indian Penal Code. The Inquest Panchanama of deceased Prashanti was drawn in the presence of P.W.2, Subhash Naik and P.W.3, Gopika Naik and the same is at Exh.10. The dead body of deceased Prashanti was referred for post mortem and the post mortem was conducted by P.W.10, Dr. E. J. Rodrigues. The post mortem report is at Exh.23. P.W.10, Dr. E. J. Rodrigues, noticed the following injuries:-

1. Horizontal stitched incised wound of 20 cms. and stitched by 19 stitches, 51" above left heel over mid back of left side chest. On removal of stitches the posterior end showed a niche at 2.5 cms. with surgical extension by 17.5 cms. on the anterolateral wall of left side chest wall. This 2.5 cms. of incised wound had clean margin with posterior angle acutely cut and anterior angle at niche less acutely cut. It has made corresponding cut in the subcutaneous tissue and muscles of chest wall of 3 cms. with clean cut margin with posterior end acutely cut and anterior end less acutely cut with thickness of 3.5 cms. in 5th left inter costal space in posterior axillary line. It has then made a cut of 3 x 2 cms. in posterior aspect of upper lobe of left lung and 2 x 1 cms. over left lower lobe which are seen stitched by surgeon with effusion of blood all around. The direction of stab wound was downward medially and forward. There is collapse of left lung with severe pallor. Total depth from skin to the cut of lower lobe of left lung is about 5

cms. Left pleural cavity contained 750 cc of fluid blood. This injury is caused by sharp pointed penetrating cutting weapon and the surgical extensions by surgeon and is ante mortem in nature.

2. Surgical intercostal drainage wound of 3 cms. in left second intercostal space and 2.5 cms. into stitched in 6th left intercostal space.
3. Stitched cut open drip wound of 2.5 cms. into stitched in lower medial aspect of right leg. The injuries no.2 and 3 are surgical in nature."

3. According to P.W.10, Dr. E. J. Rodrigues, death was due to haemorrhage and shock as injury to left lung. The clothes of the deceased came to be attached in the presence of P.W.5, Sandesh Naik, vide Attachment Panchanama at Exh.15. The clothes are M.O.2. During interrogation, the Appellant/Accused is alleged to have made a statement that he would point out the place where he had hidden the knife. This disclosure was made in the presence of P.W.2, Subhash Naik and P.W.14, Sudesh Narvekar. In pursuance to the disclosure statement, knife M.O.3 came to be attached. The statement and the panchanama is at Exh.29. Prosecution has also recorded the statement of P.W.15, Siraj Khan, from whom the Appellant/Accused has purchased the knife. After completion of the investigation, a charge-sheet against the Appellant/Accused came to be filed. On committal of the case to the Court of Sessions, charge vide Exh.4

for an offence punishable under Section 302 of the Indian Penal Code came to be framed against the Appellant/Accused. The Appellant/Accused pleaded not guilty and claimed to be tried. The prosecution examined 17 witnesses in support of its case. The learned Sessions Judge, North Goa, Panaji, accepting the prosecution evidence convicted and sentenced the Appellant/Accused as aforestated.

4. Prosecution has examined P.W.7, Lata alias Gandhali Salgaonkar and P.W.8, Pravin Naik. Prosecution has also examined P.W.13, Bhagwant Naik.

5. P.W.7, Lata alias Gandhali Salgaonkar, states that her sister is married to the brother of the Appellant/Accused and accordingly, deceased Prashanti was the sister-in-law of his sister. According to her, on the day of the incident, at around 1.30 p.m., she heard some noise of utensils in the kitchen room of her house and her sister Yogita went to the kitchen to find out what had happened. Since her sister did not return for some time, she went to the kitchen. She saw that Prashanti had fallen on the floor of the kitchen. Her sister Yogita lifted the said Prashanti and thereafter Prashanti was taken to the hospital. Deceased Prashanti had sustained a bleeding injury. She was declared hostile and cross-examined on behalf of the

prosecution. Apart from confronting the witnesses with the portion recorded in her statement, nothing has been elicited in the cross-examination. The evidence of this witness is, therefore, of no assistance whatsoever to the prosecution.

6. P.W.8, Pravin Naik, states that the Appellant/Accused is his younger brother. On the day of the incident, at about 1.30 p.m., he was watching T.V. in the hall of his house and at that time, he, his parents, P.W.7, Lata alias Gandhali Salgaonkar and his deceased sister Prashanti were present in the house. According to him, the Appellant/Accused was not present in the house and had gone to catch fish. Suddenly, his mother Gomati came running and told him that something was wrong to Prashanti and that Prashanti was bleeding from her back. A vehicle was brought and his sister was taken to P.W.9, Dr. Rajendra Priolkar and thereafter to the Goa Medical College, Bambolim. According to him, the Appellant/Accused returned home at about 5.00 p.m. on the day of the incident. He has further stated that there was no proposal for the marriage of his sister and that she did not have any love affairs. According to him, the Appellant/Accused was not present during the night. He has identified of having lodged his complaint. He was declared hostile and the prosecution

was permitted to cross-examine him. Apart from contradicting the portion from his complaint, nothing favourable to the prosecution has been brought on record.

7. Prosecution has examined P.W.13, Bhagwant Naik, who states that he was studying in the Second Year of B.Com in a college at Ponda. He was knowing deceased Prashanti Naik. He states that he and Prashanti were friends. This witness was also declared hostile by the prosecution and the prosecution was permitted to cross-examine him. He has admitted that his statement was recorded by the Police. He has denied the suggestion that there was a love affair between him and Prashanti. Apart from contradicting with the portion from his statement nothing worthwhile has been brought out in the cross-examination. The prosecution has examined P.W.14, Sudesh Narvenkar and P.W.12, Shyam Naik, as panch witnesses on the Disclosure Memorandum Exh.29 made by the Appellant/Accused. P.W.12, Shyam Naik, states that he was called by the Ponda Police to act as a panch witness and his signature was obtained and then he was asked to go. He has not identified the Appellant/Accused. He was cross-examined by the prosecution and he has admitted that he knew P.W.13,

Bhagwant Naik, but does not know the relationship between P.W.13, Bhagwant Naik and deceased Prashanti. He has stated that he was in the Police Station for 2 to 3 minutes only. The papers were already written when he was asked to sign and the Appellant/Accused was not present in the Police Station. P.W.14, Sudesh Narvenkar, states that he was called at the Police Station on 9th May, 2001 and in his presence, the Appellant/Accused had stated that he had hidden a knife below a banyan tree at Madcaim. The panch witness, the Police and the Appellant/Accused then proceeded to the place pointed by the Appellant/Accused and the Appellant/Accused removed the knife hidden below the banyan tree. He has identified the knife M.O.3 as the same knife seized at the instance of the Appellant/Accused. He has admitted that there is a path-way but he does not know whether the path-way leading to the place is used by the workers of Western India factory. He has also admitted that the banyan tree is close to the path-way. P.W.17, Edwin Colaco, in respect of the discovery only states " during the interrogation of the Accused he made a disclosure statement that he had kept the knife used for the offence in some bushes somewhere near the workshop". As per the Report of the Chemical Analyser at Exh.37, blood was found on the knife. However, neither the

group nor its origin could be determined. P.W.10, Dr. E. J. Rodrigues, has stated that the injury sustained by the deceased Prashanti could be caused by a weapon like the knife M.O.3. The learned Trial Court has referred to the complaint, Exh.19, lodged by P.W.8, Pravin Naik. Incidentally, it may be stated that P.W.8, Pravin Naik, was declared hostile and was cross-examined. The learned Trial Court then accepting the statement of P.W.8, Pravin Naik, that the Appellant/Accused was not in the house when the incident occurred and the Appellant/Accused was not present even when P.W.8, Pravin Naik, returned from the hospital was a conduct pointing to the complicity of the Appellant/Accused. The learned Trial Court in paragraph 8 of the Judgment has held thus:-

"In the normal course of events the accused who is the blood brother of the deceased Prashanti would not have remained away from the house when a serious incident resulting in the death of his sister had taken place. This conduct of the accused clearly indicate the guilty consciousness of the accused".

8. A First Information Report is not a substantive piece of evidence. It can only be used to corroborate or contradict the maker. In this case, admittedly, P.W.8, Pravin Naik, was cross-examined on

the basis of the recitals in the First Information Report at Exh.19 and has admitted the contents thereof to be not correct. The contradiction so brought on record cannot be used as substantive evidence. This is a case, therefore, where there is no substantive evidence whatsoever apart from the discovery of the knife, M.O.3 at the instance of the Appellant/Accused. That circumstance alone is wholly insufficient to sustain a charge under Section 302 of the Indian Penal Code. The reason given by the learned Trial Court for convicting the Appellant/Accused is wholly unsustainable in law and the Judgment deserves to be quashed and set aside.

9. In our considered opinion, there is no evidence worth the name. Save the seizure of the knife at the instance of the Appellant/Accused.

10. The Appeal, therefore, has to be allowed and is accordingly allowed. The conviction and sentence passed by the learned Sessions Judge, North Goa, Panaji, in Sessions Case No.35 of 2001, convicting the Appellant for an offence punishable under Section 302 of the Indian Penal Code and the sentence passed thereon is hereby quashed and set aside and the Appellant is acquitted of the charge for which he was

convicted. The Appellant be set at liberty forthwith,  
if not wanted in any other case.

A. M. KHANWILKAR, J.

P. V. HARDAS, J.

RD.